

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

DILorenzo BIOMEDICAL, LLC,

Plaintiff,

v.

LIVANOVA, INC., and LIVANOVA USA, INC.,

Defendants.

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**Civil Action No. 4:23-cv-1800**

Patent Case

Jury Trial Demanded

**PATENT CASE SCHEDULING ORDER**

It is hereby **ORDERED** that the following schedule and the Rules of Practice for Patent Cases in the Southern District of Texas will apply in this case:

0	<b>October 16, 2023</b>	<b>Deadline for LivaNova to Answer or Otherwise Respond to Complaint</b> (At this time, LivaNova anticipates filing a Rule 12(b)(1) motion to dismiss.)
1	<b>October 24, 2023</b>	<b>Scheduling Conference</b>
2	<b>November 6, 2023</b>	<b>Deadline for DiLorenzo Biomedical to file opposition to LivaNova's anticipated Rule 12(b)(1) motion to dismiss</b>
3	<b>November 16, 2023</b>	<b>Deadline for LivaNova to file reply in support of its anticipated Rule 12(b)(1) motion to dismiss</b>  <b>The parties must select a mediator for this case.</b>
4	<b>December 18, 2023</b>	<b>MEDIATION TO BE COMPLETED BY THIS DATE</b>  The parties and mediator must comply with S.D. TEXAS LOCAL RULE 16.

5	<b>TBD</b>	<b>Court's decision regarding LivaNova's anticipated Rule 12(b)(1) motion to dismiss. The parties agree to submit an updated scheduling order within seven days of the Court's decision.</b>
6	2 weeks after # 5 (or 3 weeks after # 4 if LivaNova does not file a motion to dismiss)	<p><b>FACT DISCOVERY BEGINS</b></p> <p><b>INITIAL DISCLOSURES</b> Comply with Rule 26(a).</p> <p><b>PRELIMINARY INFRINGEMENT CONTENTIONS</b> Comply with P.R. 3-1 and P.R. 3-2. After this date, it is necessary to obtain leave of court to add and/or amend infringement contentions, pursuant to Patent Rule (P.R.) 3-7.</p> <p><b>JOIN ADDITIONAL PARTIES OR ADD NEW PATENTS AND/OR CLAIMS</b> It is not necessary to file a motion to join additional parties before this date. Thereafter, it is necessary to obtain leave of court.</p>
7	6 weeks after # 6	<p><b>PRELIMINARY INVALIDITY CONTENTIONS</b> Comply with P.R. 3-3 and 3-4. <u>After this date</u>, it is necessary to obtain leave of Court to add and/or amend invalidity contentions, pursuant to P.R. 3-7.</p> <p><b>INEQUITABLE CONDUCT ALLEGATIONS</b> Before this date, it is not necessary to file a motion for leave to add inequitable conduct allegations. Thereafter, it is necessary to obtain leave of court to add inequitable conduct allegations.</p>
8	2 weeks after # 7	<p><b>EXCHANGE PROPOSED TERMS AND CLAIM ELEMENTS FOR CONSTRUCTION</b> Comply with P.R. 4-1.</p>
9	4 weeks after # 8	<p><b>EXCHANGE PRELIMINARY CLAIM CONSTRUCTIONS AND EXTRINSIC EVIDENCE</b> Comply with P.R. 4-2.</p>
10	9 weeks after # 7	<p><b>JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT</b> Comply with P.R. 4-3.</p> <p><b>AMEND PLEADINGS</b> It is not necessary to file a Motion for Leave to Amend</p>

		before the deadline to amend pleadings.
11	21 weeks after # 6	<b>DISCOVERY DEADLINE ON CLAIM CONSTRUCTION ISSUES</b> <i>See</i> P.R. 4-4.
12	3 weeks after # 11	<b>TECHNOLOGY TUTORIAL DEADLINE</b> Provide Court with technology tutorials (optional).
13	3 weeks after # 11	<b>OPENING CLAIM CONSTRUCTION BRIEF</b> Comply with P.R. 4-5(a)(1).
14	2 weeks after # 13	<b>RESPONSIVE CLAIM CONSTRUCTION BRIEF</b> Comply with P.R. 4-5(a)(2).
15	1 week after # 14	<b>REPLY CLAIM CONSTRUCTION BRIEF</b> Comply with P.R. 4-5(a)(3).
16	1 week <i>before</i> <i>Markman</i> Hearing	<b>JOINT CLAIM CONSTRUCTION CHART</b> Comply with P.R. 4-5(b) and (c).
17	approx. 15 weeks after # 10	<b>CLAIM CONSTRUCTION (MARKMAN) HEARING</b> at _____m. at the United States District Court, Courtroom _____, _____, Texas.
18	<i>Markman</i> ruling within 6 weeks after <i>Markman</i> hearing	<b>Court's Decision on Claim Construction (<i>Markman</i> Ruling)</b> <u><i>(If ruling is late, parties may seek amendment of remaining dates in Scheduling Order.)</i></u>
19	4 weeks after <i>Markman</i> Ruling (# 18)	<b>DEADLINE FOR FINAL INFRINGEMENT CONTENTIONS AND TO AMEND PLEADINGS ON INFRINGEMENT CLAIMS</b> <b>NOTE:</b> Except as provided in P.R. 3-6, if the amendment would affect preliminary or final infringement contentions, a motion must be made under P.R. 3-7 irrespective of whether the amendment is made before this deadline.
20	1 week after # 19	<b>PRIVILEGE LOGS/WILLFULNESS</b> Comply with P.R.3-8

		All parties furnish privilege logs by this date.
21	2 weeks after # 19	<p><b>DEADLINE FOR FINAL INVALIDITY CONTENTIONS AND TO AMEND PLEADINGS ON INVALIDITY CLAIMS.</b></p> <p><b>NOTE:</b> Except as provided in P.R. 3-6, if the amendment would affect preliminary or final invalidity contentions, a motion must be made under P.R. 3-7 irrespective of whether the amendment is made before this deadline.</p>
22	5 weeks after #21	<p><b>COMPLETION OF FACT DISCOVERY</b></p> <p>Written discovery requests are NOT timely if they are served so close to this deadline that under the Fed. R. Civ. P. the response would not be due until after this deadline.</p>
23	7 weeks after # 21	<p><b>DESIGNATION OF EXPERTS AND REQUIRED REPORTS OTHER THAN CLAIM CONSTRUCTION AND ATTORNEYS' FEES</b></p> <p>Party with burden of proof ("BOP") on non-construction and fees issues shall comply with Fed. R. Civ. P. 26(a)(2)(A-C).</p>
24	4 weeks after # 23	<p><b>DESIGNATION OF RESPONSIVE EXPERTS AND REQUIRED REPORTS</b></p> <p>Party not having BOP on non-construction and fees issues shall comply with Fed. R. Civ. P. 26(a)(2)(A-C).</p>
25	4 weeks after # 24	<b>COMPLETION OF EXPERT DISCOVERY</b>
26	4+ weeks after # 25	<b>DISPOSITIVE AND NON-DISPOSITIVE MOTIONS DEADLINES (INCLUDING <i>DAUBERT</i> MOTIONS)</b>
27	at least 2 weeks before Docket Call	<p><b>JOINT PRETRIAL ORDER AND MOTION IN LIMINE DEADLINE</b></p> <p>The Joint Pretrial Order will contain the pretrial disclosures required by Fed. R. Civ. P. Rule 26(a)(3), Local Rules and this Court's procedures. Plaintiff is responsible for timely filing the complete Joint Pretrial Order. Failure to file a Joint Pretrial Order timely may lead to dismissal or other sanction in accordance with the applicable rules.</p>

28		<b>DOCKET CALL/ FINAL PRETRIAL CONFERENCE</b> at the United States District Court, Courtroom _____, _____, Texas.
29		<b>JURY SELECTION AND TRIAL</b> commences, subject to Court's criminal docket

SIGNED at \_\_\_\_\_, Texas, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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ANDREW S. HANEN  
UNITED STATES DISTRICT JUDGE